IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1717 OF 2004

Jilani Nasiruddin Gore,
a Muslim, aged 51 years, Occu.Business,
of Village Badlapur, Tal.Ambarnath,
Dist.Thane. ...Applicant

Versus

The State of Maharashtra,
(through Inspector of State
Excise Flying Squad, Bombay). ...Respondent

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Mr.M.S.Solkar for Applicant.
Mr.K.V.Saste, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

JUNE 21, 2005.

JUDGMENT :

1. This Application under Section 482 of the Code of Criminal Procedure takes exception to the order passed by the Court of Sessions for Greater Bombay dated March 19, 2004 dismissing the Revision

Application No.125 of 2004 preferred by the Applicant, thereby confirming the order passed by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai in case No.2/N/2004 allowing the Applicant's request for custody of truck on condition stated in the order.

2. The prosecution case is that the truck belonging to the Applicant bearing registration No.MWU-7711 was intercepted on 28th December 2003, when it was found loaded with fire wood, which was being carried from the Forest, to be delivered at the site where country liquor was illegally manufactured by local bootleggers. On that basis, the truck in question was seized in connection with C.R. No.590 of 2003. On the other hand, the case of the Applicant is that false case has been registered by the local police. According to the Applicant, the truck was carrying licensed forest wood, to be delivered at the site, which was owned by Pashupati Mhatre from where he was carrying on business of fire wood (vakhar). It is not necessary for this Court to go into the correctness of the stand taken by the Applicant or that of the

prosecution. Suffice it to observe that the prosecution case will have to be accepted as it is for the present. As mentioned earlier, according to the prosecution, the truck was carrying fire wood to a place where country liquor was being illegally manufactured by local bootleggers. In other words, as the material found in the truck (fire wood) was to be used for manufacture of illegal country liquor, which is an offence under the provisions of Bombay Prohibition Act, 1949 (hereinafter referred to as 'the Act'), the subject truck was seized, as it was liable to be confiscated under the provisions of the Act. The Applicant, therefore, preferred application before the Trial Judge for return of the property. The Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, was pleased to allow the application preferred by the Applicant for return of the subject truck, but on condition that he shall furnish bank guarantee of Rs.1,00,000/- (Rupees One Lakh) and undertake to produce the same when required. The order also obligates the Applicant not to create third party interest in the truck during the pendency of the trial. This order was

carried in Revision by the Applicant before the Court of Sessions for Grater Mumbai being Revision Application No.125 of 2004. The Revisional Court not only affirmed the opinion recorded by the Trial Judge but went on to observe that such an order ought not to have been passed. None the less, proceeded to merely dismiss the Revision Application upholding the view taken by the Trial Judge. The Applicant has therefore approached this Court by way of present application under Section 482 of the Code.

3. According to the Applicant, the truck was used for carrying licensed fire wood. In the first place, the said fire wood was being transported authorisedly under license from the Forest Department. Accordingly, contends the Applicant, the Prohibition Officer had no authority to seize the vehicle, namely, the subject truck, which merely contained fire wood, much less, licensed fire wood, and not the prohibited items such as intoxicant, hemp, mhowra flowers or molasses or implement and apparatus required for illegal manufacture of country liquor. Strong reliance is

placed on the decision of the Apex Court in the case of **State of Maharashtra & Ors. vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh reported in (2000) 2 SCC 69** to contend that principle underlying the said decision ought to be followed to answer the point in issue in favour of the Applicant. In other words, it is contended that as the truck was carrying only fire wood and not the prohibited items, the same could neither be seized nor confiscated in law under the provisions of the Act. It was then contended that at any rate, the condition imposed by the Trial Judge for return of the truck to the Applicant is excessive.

4. On the other hand, Counsel for the Respondent State has supported the opinion expressed by the Courts below and submits that the Application is ill-advised and the same ought to be dismissed, being devoid of merits. According to the learned A.P.P., there is express provision which enables the Officer of the State to not only seize, but also confiscate the subject truck which was found carrying fire wood, which in turn, was to be used in the manufacture of illegal country

liquor. Reliance is placed on the scheme of the relevant provisions of the Act, inter alia, provisions of Sections 98, 120, 123, 125 and 132 to contend that on conjoint reading of these provisions, it is amply clear that the Officer was not only competent to seize the truck but the subject vehicle was liable to be confiscated under the said provisions. Insofar as the condition imposed by the lower Court for release of the subject truck to the Applicant, according to the learned A.P.P., the same is just and proper and does not warrant any interference, as it is consistent with the several orders passed by the High Court and the Supreme Court on this subject, which were pressed into service before the lower Courts.

5. After considering the rival submissions, the issue raised on behalf of Applicant, would require scrutiny of the Scheme of provisions contained in the said Act. Indeed, if this Court was to take the view that there is no express provision which enables the Officer to seize the subject vehicle or to render the subject vehicle

liable for confiscation, as it was only found to be carrying fire wood, albeit, which was to be used for the manufacture of illegal country liquor, then the Applicant would be right in relying on the exposition contained in the case of **State of Maharashtra (supra)**. In that case, the Apex Court has taken the view that luxury bus carrying passengers, excess in number than allowed by the permit, does not amount to contravention of requirement of Section 207 of the Motor Vehicles Act, 1988, for which reason, seizure and retention of vehicle on that count was not authorised.

6. In the present case, however, I find substance in the submission canvassed on behalf of the Respondent State that on conjoint reading of the relevant provisions, it would appear that provision is made which not only authorises seizure of the truck carrying articles or items which are likely to be used in the process of manufacture of illegal country liquor (such as fire wood) but also to confiscation of the said articles or items along with the truck used for transporting the same. The relevant sections pressed into service are

reproduced hereunder.

"98. (1) Whenever any offence punishable under this Act has been committed,

(a) any intoxicant, hemp, mhowra flowers, molasses, materials, still, utensil, implement or apparatus in respect of which the offence has been committed,

(b) where in the case of an offence involving illegal possession, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than those in respect of which an offence under this Act has been committed, the entire stock of such intoxicant, hemp, mhowra flowers or molasses,

(c) where in the case of an offence of illegal import, export or transport, the offender has attempted to import, export or transport any intoxicant, hemp, mhowra flowers or molasses, in contravention of the provisions of this Act, rule, regulation or order or in breach of a condition of license, permit, pass or authorization, the whole quantity of such intoxicant, hemp, mhowra flowers or molasses which he has attempted to import, export or transport,

(d) where in the case of an offence of illegal sale, the offender has in his lawful

possession any intoxicant, hemp, mhowra flowers or molasses other than that in respect of which an offence has been committed, the whole of such other intoxicant, hemp, mhowra flowers or molasses,

shall be confiscated by the order of the Court.

(2) Any receptacle, package or covering in which any of the articles liable to confiscation under sub-section (1) is found and the other contents of such receptacle, package or covering and the animals, carts, vessels or other conveyances used in carrying any such article shall likewise be liable to confiscation by the order of the Court."

"99. When during the trial of a case for an offence under this Act the Court decides that anything is liable to confiscation under the foregoing Section, the Court may, after hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim order confiscation, or in the case of any article other than an intoxicant, hemp, mhowra flowers or molasses give the owner an option to pay fine as the Court deems fit in lieu of confiscation;

Provided that no animals, cart, vessel, vehicle or other conveyance shall be confiscated if the owner thereof satisfies the Court that he had exercised due care in preventing the commission of the offence."

"120. The [Commissioner], Collector or any Prohibition Officer duly empowered in this behalf by the State Government or any

Police Officer may-

(a) enters at any time by day or by night, any warehouse, godowns, shop, premises, house, building, vessel, vehicle or enclosed place in which he has reason to believe that any intoxicant, hemp, mhowra flowers, molasses, material or article liable to confiscation under this Act is manufactured, kept or concealed or that, any still, utensil, implement or apparatus is used, kept or concealed for the purpose of manufacturing any intoxicant, contrary to the provisions of this Act;

(b) in case of resistance break open any door and remove any other obstacle to the entry into any such warehouse, godown, shop, premises, house, building, vessel, vehicle or enclosed place;

(c) seize any intoxicant, hemp, mhowra flowers or molasses and any material used in the manufacture of any intoxicant and any still, utensil, implement or apparatus and any other thing which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence under this Act; and

(d) detain and search and if he thinks proper arrest any person whom he has reason to believe to be guilty of any offence under this Act."

"123. (1) any Prohibition Officer authorized by [State] Government in his behalf or any Police Officer may-

(a) arrest without warrant any person whom he has reason to believe to be guilty of an offence under this Act;

(b) seize and detain any intoxicant, hemp, mhowra flowers or molasses or other articles which he has reason to believe to be liable to confiscation or forfeiture under this Act [and seize any document or other article which he has reason to believe may furnish evidence of the commission of an offence under this Act]."

(2) any Prohibition Officer authorised by the [State] Government under this Section who arrests any person under clause (a) or seizes and detains any article under clause (b) of sub-section (1) shall forward such person or article as the case may be, without unnecessary delay to the Officer in charge of the nearest Police Station."

"125. The [Commissioner], Collector or any Prohibition Officer duly empowered in this behalf or any Police Officer may-

(a) seize in any open place, or in transit any intoxicant, hemp, mhowra flowers or molasses or any other thing which he has reason to believe to be liable to [confiscation or forfeiture] under this Act or any other law for the time being in force relating to excise, revenue [and any document or other article which he has reason to believe may furnish evidence of the commission of an offence under this Act];

(b) detain and search any person whom he has reason to belive to be guilty of an offence against this Act or any other law for the time being in force relating to excise, revenue, and if such person has any intoxicant, hemp, mhowra flowers, molasses or [other thing] in his

possession, arrest him."

"132. [When anything has been seized under the provisions of this Act by a Prohibition Officer exercising powers under Section 129 or by an Officer in charge of a Police Station], or has been sent to him in accordance with the provisions of this Act, such Officer, after such enquiry, as may be deemed necessary,-

(a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward it to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken,

(b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send it with a full report of the particulars of seizure to the Collector,

(c) if no offence appears to have been committed, shall return it to the person from whose possession it was taken."

(emphasis supplied)

7. The core issue that arises for consideration is: whether there is provision in the Act to authorise the specified Officers to seize any truck carrying fire wood, which in turn, was likely to be used for manufacture of illegal country liquor. This aspect can be answered with reference to Section 98 of the Act which provides

for things liable to confiscation. Clause (a) of sub-section (1) of Section 98 refers to items such as any intoxicant, hemp, mhowra flowers, molasses, material, still, utensil, implement or apparatus in respect of which the offence has been committed. Clause (b) of sub-section (1) indicates items that can be confiscated in the case of an offence involving illegal possession. This clause is not relevant for the case on hand. Whereas, clause (c) of sub-section (1) relates to a case of an offence of illegal import, export or transport, the whole quantity of intoxicant, hemp, mhowra flowers, molasses which the offender attempted to import, export or transport, can be confiscated. Clause (d) spells out the items which can be confiscated if involved in the offence of illegal sale. However, sub-section (2) of Section 98 provides for confiscation of any receptacle, package or covering in which any of the articles liable to confiscation under sub-section (1) is found and the other contents of such receptacle, package or covering and the animals, carts, vessels or other conveyances used in carrying any such article shall likewise be liable to confiscation by the order of

the Court. Going by the letter of Section 98, it does appear that the vessel or vehicle in question should carry articles or items referred to in sub-section (1) for being liable to confiscation. In my opinion, fire wood, which is likely to be used in the process of manufacture of illegal country liquor, would form part of the items specified in sub-section (1) of Section 98. This is so because clause (a) of sub-section (1) of Section 98 refers to items such as intoxicant, hemp, mhowra flowers, molasses, "materials", still, utensil, "implement or apparatus" in respect of which, the offence has been committed. Expressions "material", "implement" or "apparatus" are wide enough to envelope item such as fire wood, which was likely to be used in the manufacture of illegal country liquor. Those expressions have not been defined in the Act, for which reason, we can usefully place reliance on the meaning of the said expressions, as can be discerned from the Concise Oxford Dictionary, Tenth Edition, as follows:

> "Apparatus - 1 the equipment needed for a particular activity or purpose. 2 a complex structure within an organization:

> the apparatus of government. 3 (also critical apparatus, apparatus criticus) a collection of notes accompanying a printed text." (emphasis supplied)

. The above meaning of apparatus refers to the equipment needed for a particular activity or purpose. The meaning of expressions "equipment", "implement" and "material" in the same dictionary is mentioned as follows:

> "Equipment - 1 the items needed for a particular purpose. 2 the process of supplying these items.
>
> "Implement - 1 a tool, utensil, or other piece of equipment, used for a particular purpose. 2 Scots Law performance of an obligation, put into effect."
>
> "Material - 1 the matter from which a thing is or can be made. items needed for an activity. 2 information or ideas for use in creating a book, performance, or other work. 3 cloth or fabric. 4 a person of a specified quality or suitability: he's not really Olympic material. adj.1 denoting or consisting of physical objects rather than the mind or spirit : the material world. 2 important; essential; relevant; the insects did not do any material damage. 3 Philosophy concerned with the matter of reasoning, not its form." (emphasis supplied)

. The meaning of the aforesaid expressions, as mentioned earlier, in my opinion, would clearly envelope the item such as fire wood, which in turn, was likely to be used for the manufacture of illegal country liquor. If it is so, such fire wood which was being transported in the subject vehicle was not only liable to seizure, but also confiscation along with the said vehicle. To get over this position, it was vehemently canvassed on behalf of the Applicant that clause (c) of sub-section (1) of Section 98 provides for confiscation of things referred to therein in case of an offence of illegal import, export or transport. The said provision restricts the authority only to intoxicant, hemp, mhowra flowers or molasses and not the wide import of items provided for in clause (a). This argument seems to be attractive, though devoid of merits. Clause (c) deals specifically with illegal import, export or transport of prohibited items referred to therein. In other words, the said clause will not cover the other items or equipments which are or likely to be used in the process of manufacture of illegal country liquor, which, however, are covered by

clause (a) of the same provision.

8. Viewed in this perspective, it is not possible to accede to the submission canvassed on behalf of the Applicant that there is no provision in the Act, which would envelope items such as fire wood, which was being transported to be used in the process of manufacture of illegal country liquor. On the other hand, there is substance in the argument canvassed on behalf of the Respondent State that such item is covered by the provisions of Section 98 enabling the Authority to not only seize, but confiscate the same. Indeed, Section 99 of the Act provides for return of things liable to confiscation to bonafide owners, provided, the owner satisfies the Court that he had exercised due care in preventing the commission of the offence. That question has to be decided on the facts of each case. The authority to seize the articles which are liable to confiscation such as fire wood as well as the subject vehicle, which was used for transporting of such fire wood, which in turn, was likely to be used in the process of manufacture of illegal country liquor, can be traced to Section

120 of the Act which authorises the Commissioner/Collector or any Prohibition Officer duly empowered in that behalf by the State Government or any Police Officer to carry out seizure. Clause (c) of Section 120 which may be relevant for our purpose provides for seizure of any intoxicant, hemp, mhowra flowers or molasses and "any material" used in the manufacture of any intoxicant and any still, utensil, "implement or apparatus and any other thing", in the event, the Officer has reason to believe that the same is liable to confiscation under the Act. These provisions clearly answer the issue that arises for consideration in the present case against the Applicant. The expression "any other thing" occurring in clause (c) of Section 120 juxtaposed with Section 98, in particular, sub-section (2) thereof would envelope the vehicle used for transporting of item such as fire wood to be used in the process of manufacture of illegal country liquor. Accordingly, just as the fire wood likely to be used in the process of manufacture of illegal country liquor is liable to confiscation, the vehicle carrying the same also becomes liable to

confiscation by the order of the Court by virtue of this provision. Similarly Section 123 is a provision which enables the Prohibition Officer authorised by the State Government in that behalf or any Police Officer to arrest the offenders and seizure of contraband articles. Clause (b) of sub-section (1) of Section 123 provides for seizure and detention of any intoxicant, mhowra flowers or material or "other articles", which the Officer has reason to believe to be liable to confiscation or forfeiture under the Act.

9. Reliance was also placed by the Respondents on the Notification issued by the Commissioner of Excise and Prohibition dated 1st December 1953 to support the argument that both the fire wood as well as the subject truck was liable for seizure and confiscation under the provisions of the Act.

10. We have already seen that there is express provision in the shape of Section 98 which provides for confiscation of items such as fire wood, which in turn, was likely to be used in the manufacture

of illegal country liquor, as also, the vehicle, which were to be used for transporting such fire wood. So understood, in view of the expansive provisions of the Act, the specified Officer is empowered to seize not only the fire wood but also the vehicle used for transporting such fire wood being liable to confiscation or forfeiture under Act.

11. On the above reasoning, the argument canvassed on behalf of the Applicant that there is no provision in the Act, either to seize or confiscate the fire wood and for which reason, the vehicle used in transporting such fire wood, ought to fail. Accordingly, the principle expounded in the reported decision of the Apex Court in the case of **State of Maharashtra (supra)** pressed into service, will be of no avail to the Applicant.

12. That takes me to the second contention canvassed on behalf of the Applicant. It is submitted that the condition imposed by the Trial Judge and as confirmed by the Revisional Court, requiring the Applicant to furnish bank guarantee

of Rs.1,00,000/- (Rupees One lakh) is excessive. That is a discretionary order passed by the Court below, which has been confirmed by the Revisional Court. Besides, the same is founded on several other orders passed by the High Court as well as the Supreme Court in similar situations pressed into service on behalf of the Respondents before the lower Courts.

13. The Courts below were conscious of the fact that the value of the truck was Rs.2,50,000/- (Rupees Two lakhs Fifty Thousand), whereas, that of the fire wood would be around Rs.10,000/- (Rupees Ten Thousand). Even if the value of the fire wood was to be discarded for the time being, the Applicant was rightly directed to offer bank guarantee in the sum of Rs.1,00,000/- (Rupees One Lakh), which was around 50% of the value of the truck. In other words, the conditions imposed by the Trial Judge for release of the truck to the Applicant by furnishing bank guarantee of Rs.1,00,000/- (Rupees One Lakh) with undertaking to produce the same as and when required and not to create third party interest in the truck during the

pendency of the trial, cannot be said to be excessive or unwarranted. No interference is warranted, that too, in exercise of inherent powers in respect of the said conditions.

14. Accordingly, the Application deserves to be dismissed, being devoid of merits. Hence, dismissed.

A.M.KHANWILKAR, J.